United States Court of Appeals for the Second Circuit



APPENDIX

76-1576

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee

76-1576

JAMES F. HEIMERLE, and RICHARD WARME,

A/k/e Richard Warner,

Defendants-Appellants

REHEARING/REHEARING EN BANC

APPENDIX

APP 13 1978

FOR THE DEFENANT-APPELLANT JAMES F. HEIMERLE

> James F. Heimerle Appellant pro se PMB 01673 Atlanta, Ga. 30315

PAGINATION AS IN ORIGINAL COPY

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ADDITIONAL IMPORTATION

Due to necessity of compliance with Rule (40)(a)'s 14 day time limit relevant and pertinent information was inadvertently omitted from Rehearing-Rehearing En Banc Petition. The following information, pagination and correlation necessary for a cogent understanding of same is set out below:

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UNITED STATES OF AMERICA

: Before:

: HON. CHARLES M. METZNER, D.

and a Jury.

JAMES F. HEIMERLE and JAROLD ROSENBERG,

: 76 Cr. 146

Defendants. :

.19

New York, May 3,4,5, 1976.

STENOGRAPHER'S MINUTES

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

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equivalent and there are various kinds of forged instruments
and some fall within the federal area and some in the state
area and some are comingled but forgery and counterfeiting
are one and the same and show a predisposition on the part
of these defendants to engage in the use of counterfeiting

or forging negotiable instruments, be they currency and
you heard testimony of Agent McDonell with respect to forged

Treasury Bills with Mr. Heimerle.

than forging a person's name to a check. One is a completely mechanical device.

MR. NAFTALIS: The government argues this shows a criminal predisposition on the part of this defendant to engage in that sphere of criminal activity.

THE COURT: I will overrule the offer of proof except insofar as it applies to forged counterfeit money.

MR. NAFTALIS: I will check.

THE COURT: I will not allow in forged checks as a similar act to counterfeit money.

There is a question in my mind regarding the credit cards though. How were these cards product

MR. NAFTALIS: We have here the statement of that with respect to Mr. Rosenberg, a description is that he forged the name of the customer on this instrument.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLFY SOUARE, NEW YORK, N.Y. = 791-1020

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THE COURT: I won't let that in as a prior . similar act as passing counterfeit money.

MR. NAFTALIS: Your Honor, under the Florida statute it indicates manufactured a false credit card and I could see they were in the same area as manufacturing counterfeit money.

THE COURT: But forging a man's signature to a bill using a credit card is not a prior similar act as prior similar acts are indicated.

MR. NAFTALIS: The government respectfully excepts but accepts the Court's ruling.

THE COURT: I will allow any prior conviction for any counterfeit money.

MR. NAFTALIS: The government would make such a proffer against defendant Heimerle.

MR.POLLACK: One question which immediately comes to mind after reviewing my client's prior incident with the law is that this last conviction was for a conspiracy under the statute of 473, no substantive crime charged.

THE COURT: I will allow a conspiracy to counterfeit money.

MR. NAFTALIS: Thank you, your Honor.

THE COURT: Any other objection to this conviction

UNITED STATES OF AMERICA

vs.

76 Cr. 146

JAMES F. HEINERLE and HAROLD ROSENBERG,

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New York, New York May 4, 1976 10 A. M.

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(Trial resumed.)

(Jury present.)

THE COURT: You may proceed.

MR. NAFTALIS: Your Honor, the government wishes to offer as proof what has been marked as Government Exhibit 17 for identification and I pass it up to the court for the court's inspection. 5

THE COURT: Show it to Mr. Pollack first.

MR. NAFTALIS: I have.

THE COURT: Any objection to it, Mr. Pollack?

MR. POLLACK: Yes, your Honor. I.don't think it

has come in to issue yet.

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THE COURT: Let me see it.

(Handed to court.)

THE COURT: Objection overruled.

(Government Exhibit 17 for identification

received in evidence.)

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MR. NAFTALIS: If I may beg the Court's indulgence and pass it along to the jury rail instead of passing it and reading it.

THE COURT: Just tell them what it is. It is a conviction for the same crime which the defendant Heimerle is charged here.

MR. NAFTALIS: Thank you, your Honor.

a conviction of Mr. Heimerle for the same type of crime, not the same factual crime but the same type as charged here occurring on June 18, 1975 in this court.

MR. NAFTALIS: The government calls Samuel Zoma.

SAMUEL ZOMA, called as a witness on behald the government being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. NAFTALIS:

- Q Will you please state what your employment is?
- A Special Agent, United States Secret Service.
- Q What is your present assignment?
- A Office of investigations, New York Field Office.
- Q To any specific area?
- A Counterfeiting Squad.

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file. Will Mr. Pollack stipulate as to the accuracy of these files and as to the actual existence of that conviction? I have the entire file here.

MR. POLLACK: I haven't seen the file yet. I will.go over it.

THE COURT: Look at it during the recess.

(Secess)

(Jury present.)

MR. NAFTALIS: The government calls James Heavey.

JAMES EDWARD HEAVEY, called as a

witness on behalf of the government, being first duly

sworn, testified as follows:

DIRECT EXAMINATION

BY MR. NAFTALIS:

Q Mr. Heavey, by whom are you employed?

A With the United States Secret Service.

Q What is your title and assignment?

A I am assistant to the special agent in charge, in charge of the counterfeiting squad in the New York field office.

Q How long have you been a special agent of the United States Secret Service?

A Since 1965.

Q 11 years?

CHITTLEN DISTRICT COURT DEPORTED. IL COMPT.

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Q

1/26/76, which I placed on there after I Xeroxed the money.

Special Agent Heavey, were you on assignment

1	ards	Heavey - direct 154
2	with the S	ecret Service on the morning of February 6, 1976?
-3	. A	Yes, I was.
4	Q	Do you know a man named James Heimerle?
5	A	Yes.
. 6	Ω	Do you see him present in the courtroom?
7	Α.	Yes.
8	· Q	Will you point him out?
9	' A	The gentleman in the brown leisure suit with
10	the tan co	lored shirt, mustache, mod ha.zcut.
11		MR. POLLACK: Conceded, your Honor.
12	. Q	On the morning of February 6, 1976, did you
13	see Mr. He	imerle?
14	A	Yes, I did.
15	Q	In what connection did you see him? .
16	A	I was engaged in surveillance.
17	Q	What did that surveillance culminate in?
18	Α .	An arrest.
19	Q	Of whom?
20	A	Mr. James Heimerle.
21	Q	For what offense?
22	A	Sale of counterfeit one hundred-dollar Federal
23	Reserve No	tes.
24	Q.	As a consequence of your arrest of Mr. Heimerle,

did you take into your possession property on the person of.

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and the second	***	Market Company	

Name	Direct	Cross.	Redirect	Recross
Francis McDonell	9	40		•
Samuel %oma	77	82		
James Gilmartin	84			
Terry Howard Chodash	93	106		
Jane Bisacquino	117	124		
George P. Hemmer, Jr.	125	128		
John Flynn	135	139		
Ante Antolos	142	145		
James Edward Heavey	152	166		
James Meimerle	178	196	234	

EXHIBIT INDEX

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Government		Identification	Evidence	<u>. </u>
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Defendant		`		

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STATES DISTRICT COURT
N DISTRICT OF NEW YORK

. HEIMERLE.

Petitioner.

- : AFFIDAVIT

STATES OF AMERICA, : Pro Se

77 Civ. 5138 (CMM)

- COMMAN - C

Respondent.

F NEW YORK)
OF NEW YORK : ss.
N DISTRICT OF NEW YORK)

ALAN R. NAFTALIS, being duly sworn, deposes and

- 1. I am an Assistant United States Attorney
 d in the office of Robert B. Fiske, Jr., United
 Attorney for the Southern District of New York; and
 capacity I represent the United States in the above
 matter.
- 2. I am familiar with all the facts concerning ner's trial and the subsequent appeal of his convictnce I served as counsel for the Government in both
- 3. The petitioner was convicted on May 5, 1976 e counts of violating Title 18, United States Code, 473 for making three sales of counterfeited \$100 Reserve Notes to an undercover Secret Service Agent a conspiracy concerning the third such sale. This ion was affirmed on November 24, 1976 by the United

Court of Appeals for the Second Circuit by memorandum (attached hereto as Exhibit "A"). Certiorari was the petitioner by the United States Supreme Court on 3, 1977.

counterfeiting conspiracy indictment, (76 Cr. 442). cond counterfeiting conspiracy named four persons as d conspirators, Heimerle, Richard Warme, Joseph and Bernard Horwitz and a number of others as uninco-conspirators. Harold Rosenberg, Heimerle's coator in the first indictment, was not charged in the indictment nor was there any evidence that he was d in the conspiracy or even knew it existed. indictment concerned independent and separate sales terfeited \$20, \$50 and \$100 Federal Reserve Notes made petitioner and his co-conspirators. Prior to the f indictment 76 Cr. 146 counsel for petitioner had in informal discovery, as practiced in this district. that discovery he was informed of the impending ent for the second counterfeiting conspiracy. After ent for the second conspiracy, counsel for petitioner gaged in informal discovery and therefore was knowle of the separate nature of the conspiracy, its difmembership and purpose.

9. The prior convictions introduced by the ent in its direct case concerned those of the petifor his involvement in similar conspiracies to sell tribute counterfeited Federal Reserve Notes of the nomination and for his conviction for the actual sale counterfeited Federal Reserve Notes. The identical of the prior crimes and specifically as to the type terfeited obligation and denomination of the obliga-

they were clearly probative of the petitioner's intent, so as to show that the petitioner did not accident or mistake. In summary, the evidence offered

by the prejudical impact, and therefore properly

d. See <u>United States</u> v. <u>Papadakis</u>, 510 Fed. 2d 287,

d Cir.), <u>cert</u>. <u>denied</u>, 421 U.S. 950 (1975); see

ly Federal Rules of Evidence 404(b). It is further

ded that any adverse predjudice obtained as a conseof the introduction of these convictions during the

ment's direct case was removed when the petitioner

ded on his own behalf and was confronted with his

criminal conviction history, including the two prior

cions for counterfeiting.

- 10. The Government's summation and rebuttal both ed proper comment and neither were improper in any
- 11. Petitioner engages in his affidavit in a wild of baseless accusations. For example, in Paragraph 20 affidavit the petitioner implies that the signature United States Attorney was forged; the petitioner The U. S. Attorney signature purported to be that of B. Fiske, Jr., however to the naked eye it is not."

 1y, petitioner charges a "conflict of interest" in ph 38 of his affidavit and cites as a basis for this conflict the fact that his defense counsel had prebeen employed by the Department of Justice at the me as the prosec for and the prosecutor's supervisor. In the defense counsel had prepared to the argued, that the mere fact of prior employment gives rise to a conflict of interest;

of an inherent "fix" or "conspiracy to get" the ner. The petitioner similarly implies in Paragraph is affidavit that the Government used "Gestapo methods"

WHEREFORE, it is respectfully submitted that attence of this Court should stand and that petitioner's oursuant to Title 28, United States Code, Section 2255 ied in all respects.

ALAN R. NAFTALIS

As'sistant United States Attorney

to before me this

y of November, 1977.

PUBLIC

MLIS M. MUSIA
Malk, State of New York
No. 03-4535198
Milled in Bronx County
In Expires Murch 30, 1978

UNITED STATES GRAND JURY

SOUTHERN DISTRICT OF NEW YORK

John Maria St. Comments UNITED STATES OF AMERICA :

United States Court House Foley Square New York, New York

March 4, 1976 4:10 p.m.

ALAN R. NAFTALIS, ESQ.,
Special Attorney, U.S.
Department of patice

STEWART NISSENBAUM Acting Grand Jury Reporter

NATIONAL REPORTING INC. CERTIFIED SHORTHAND REPORTERS FIVE WORLD TRADE CENTER NEW YORK, N. Y. 10048 [212] 466-1280

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That's right. A

That's the number you contacted him at?

A That's the only way I could get in touch with Jimmy and he could get in touch with me at home.

That was his family's home?

A His mother's home. At that time he was living in a halfway house. He had just gotten out of Greenhaven. went to Connecticut and the Federal people put him in a halfway house.

Q Now, you were interviewed by a special agent of the Secret Service, were you not, and shown a photograph, on the 23rd of January, 1976?

A I want this to get into the record here. I sent for the Secret Service, and I asked to see them, and I told them about the counterfeiting. I want that entered into the record.

Q You identified a photograph of Mr. Heimerle as man you had been dealing with?

A Yes.

You identified him in the photograph, to the Secret Service?

Yes, I did.

In the course of your conversations with the Secret Service, did you indicate to them that Mr. Heimerle had

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sold a half a million dollars worth of counterfeit -MR. NAFTALIS: Strike that amount.

Q Did you further tell the Secret Service that you had knowledge that Heimerle had sold a substantial quantity of counterfeit 100 dollar notes to Richard Warner?

A Yes.

Q And this was a Richard Warner of Irvington, New York, correct?

A That's right.

Q Mr. Peters, I show you this picture. Can you identify the man in that photograph?

A Yes, that's Richie Warner.

MR. NAFTALIS: I would like this marked as Grand
Jury Exhibit No. 1, Mr. Reporter. (So marked.)

A I pronounced the name Werner. I always took it as Richard Werner.

Q You knew him as Richard Werner?

A Yes.

Q And the man you know as Richard Werner is the man who you identified in that photograph, Grand Jury Exhibit 1.

A All right.

Q You just testified that Mr. Heimerle sold a substantial number of these hundred dollar notes to the man you knew as Richard Werner, correct?

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A: Yes. He said that when he came home, a friend of his gave them to him. You know, as time went on, you know, he admitted everything. You know what I mean?

Q What did he tell you about them as time went on?

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menus, but, it fact, in addition to printing menus, they were printing counterfeit money?

- A This is only hearsay. This is what Jimmy told me.
- Q This is what Mr. Heimerle told you?
- A That's what Mr. Heimerle told me.
- Q He told you they were printing the counterfeit notes
 in a storefront printing --

A Right. And they had their press there. He was complaining about the cost of the press and the cost of the paper, that was very expensive, and the inks, and all that you know.

Q Yes. Now, this -- he also indicated to you that this place also, supposedly, was in the business of printing up restaurant menus, is that correct?

- A That's what he said.
 - Q This place was located in Brooklyn?
 - A In Brooklyn.
- Q Do you recall the section of Brooklyn, was it Fort Hamilton?

A I said, I told the Secret Service men, that if they concentrate around that area, that it was somewhere around that area.

- Q You believe it's somewhere in that area?
- A It was only conjecture on my part. I had no way of

think.

Q Do you recall mentioning that to the Secret Service?

A Yes, I heard that, but again -- see, that part there is conjecture, now. I just want to tell you what I know, what I know to be a fact.

You know, what I know to be a fact I'm going to tell you, whether it incriminates me or not, you know.

Q Were you present when Mr. Warner gave Bernard

Horwitz a counterfeit hundred dollar bill and sent him into
a Gimbels Department Store?

A Yes.

Q And wasn't the plan that when Mr. Horwitz went in with the hundred dollar bill, that he was supposed to try to pass it in Gimbels?

A Yes.

Q But he got caught in there?

A Yes, he got caught, poor Bernard. I don't want to reiterate. Even Ray Charles is blind, he would turn it away, it was so bad. He went in and bought an electric blanket, picked the blanket up, put it on the counter, he gave the girl the bill. It was all yellow, and the young lady looked at him like he was crazy, and she left and come back with two store detectives.

Q And the bottom line was, that Mr. Horvitz didn't

A Yes.

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Right. Q

That his ticket was taken and his room was robbed, in plain words. See, that money came right back.

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UNITED STATES DISTRICT COURT 76 CRIM. 0124 UNITED STATES OF AMERICA INDICTMENT JOHN FRANCIS RAWLE and 76 Cr. JULIAN MITCHELL. Defendants. COUNT ONE The Grand Jury charges: On or about the 26th day of January, 1976, in the Southern District of New York, JOHN FRANCIS RAWLE and JULIAN MITCHELL, the defendants, unlawfully, wilfully and knowingly and with intent to defraud, did keep in their possession and conceal certain falsely made, forged and counterfeited obligations and securities of the United States, to wit, approximately twenty one counterfeit one-hundred dollar (\$100.00) Federal Reserve Notes. (Title 18, United States Code, Sections 472 and 2.) COUNT TWO The Grand Jury further charges: On or about the 26th day of January, 1976, in the Southern District of New York, JULIAN MITCHELL, the defendant, unlawfully, wilfully and knowingly and with intent to defraud, did keep in his possession and conceal certain falsely made, forged and counterfeited obligations and securities of the United States, to wit, approximately fifteen counterfeit one-hundred dollar (\$100.00) Federal Reserve Notes. (Title 18, United States Code, Section 472.)

COUNT THREE

The Grand Jury further charges:

On or about the 26th day of January, 1976, in the Southern District of New York, JOHN FRANCIS RAWLE, the defendant, unlawfully, wilfully and knowingly and with intent to defraud, did pass, utter and publish and attempt to pass, utter and publish a falsely made, forged and counterfeited obligation and security of the United States, to wit, a counterfeit one-hundred dollar (\$100.00) Federal Reserve Note.

(Title 18, United States Code, Section 472.)

United States Attorney



DEPARTMENT OF THE TREASURY UNITED STATES SECRET SERVICE



ORIGIN Field OFFICE New York, New York

TYPE OF CASE

Cft. Note Plant Seizure Investigation Continued
INVESTIGATION MADE AT

Brooklyn, New York February 6-20, 1976

INVESTIGATION MADE BY

Special Agent

John F. Rawle

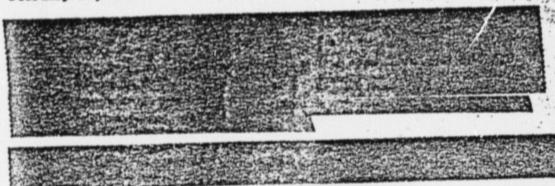
SYNOPSIS

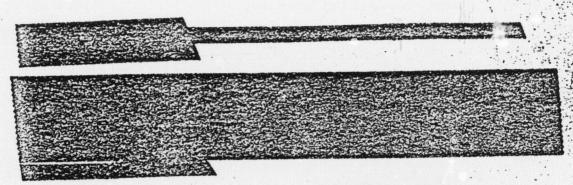
On February 6, 1976, the counterfeit note plant believed to be responsible for the production of the note was seized in Fort Hamilton, New York. Investigation Continued.

(A) DETAILS OF INVESTIGATION

Reference is made to all previous reports in this case, the latest being the M/R of SA dated February 10, 1976.

Further reference is made to the M/R of SA James Heimerle, dated Field Office, under file No. James Heimerle, dated February 12, 1976.

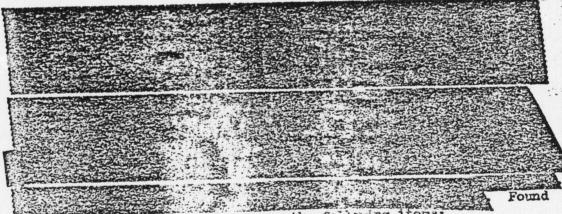




On February 6, 1976, James Heimerle and were arrested after delivering a package of the subject notes to undercover agents, of this Service.

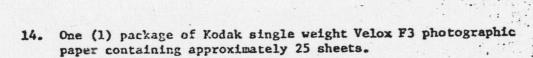
Details of the arrests and the surveillance conducted prior to these arrests are included in the aforementioned M/R submitted by SA dated February 10, 1976.

At approximately 5 AM, February 6, 1976, the writer proceeded to 9809 lith Avenue, Fort Hamilton, New York, and there met with SA's and and At this time, the writer knocked on the front door of that location and identified myself and SA's as agents of this Service. After a short time, the door was opened by an occupant of the storefront, later identified as and it was at this time that the writer observed an offset printing press in the rear of the store.



during the search of the otoro were the following items:

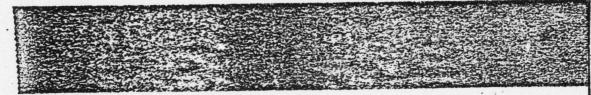
- One (1) ATF Chief 15 offset printing press, model 5-2419, serial No. DB-990.
- One (1) NuArc Rapid printer vacuum table, model FT-18-1, serial.
 No. 36601-1.
- 3. One (1) NuArc light table, model L7-23, serial No. 215912-48,
- 4. One (1) Kenro vertical "18" camera, serial No. K 798 343.
- Seven (7) boxes of Strathmore 25% cotton fiber 20 1b. bond paper containing approximately 35,000 8 1/2" x 11" blank sheets.
- 6. Six (6) boxes of Strathmore 25% cotton fiber 20 lb. bond paper containing approximately 30,000 8 1/2" x 11" sheets with printed red and blue simulated fibers.
- One (1) offset printing press blanket bearing four impressions of \$100 counterfeit notes.
- 8. Two (2) portions of an offset printing press blanket with each portion bearing partial impressions of a \$100 counterfeit note.
- 9. Two (2) 8 1/2" x 11" sheets of bond paper bearing 4 impressions each of the back of a \$100 counterfeit note, back plate No. 12.
- 10. One (1) 8 1/2" x 11" sheet of bond paper bearing 4 impressions of the front of a \$100 counterfeit note, face plate G8, quadrant G3, FRB New York, series 1974.
- 11. Five (5) boxes of Haloid photographic paper for contact printing containing approximately 100 sheets each.
- 12. One (1) box of double weight bromide photography paper containing approximately 100 sheets.
- 13. One (1) box of Kodalith autoscreen Artho photomachanical film, containing approximately 25 sheets.



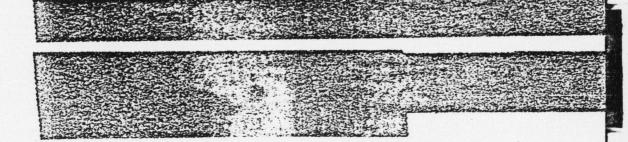
- 15. Two (2) packages of Luminous double weight portrait paper containing approximately 8 sheets.
- 16. Approximately 1 quart of Kodak PMT activator solution.
- 17. Approximately 1 quart of 3M brand cleaner-conditioner for photo offset plates.
- 18. Approximately 1 gallon of 3M brand "R" process gum.
- 19. One (1) aluminum can containing approximately 1 quart of Farbi brand brilliant green No. 939 ink.
- One (1) aluminum can containing approximately 2 gallons of brown ink.
- 21. Two (2) aluminum cans containing approximately 1/2 gallon each of gold color ink.
- 22. One (1) aluminum can containing approximately 1/2 gallon of white ink.
- 23. Two (2) aluminum cans containing approximety 1'2 gallon each of black ink.
- 24. One (1) aluminum can containing approximately 1 quart of yellow ink.
- 25. One (1) aluminum can containing approximately 1 quart of blue ink.
- 26. One (1) aluminum can containing approximately 1 quart of red ink.
- 27. One (1) can of Acrolite Ink-O-Saver spray for use with offset and letter press printing inks. .
- 28. Four (4) rolls of Scotch brand lithographers tape.

- 29. One (1) used spare ink roller containing traces of green ink.
- 30. Two (2) used inking rollers containing traces of green ink.
- 31. One (1) unused ink roller.
- 32. Four (4) 8 1/2" x 11" sheets of bond paper containing simulated red and blue fibers.
- 33. Two (2) large sheets of paper containing the handwrittn inscription "24 lb. Wove transs crest bond paper."
- 34. Fourteen (14) 10" x 15" aluminum light sensitive plates, unexposed.

All of the aforementioned items found during the search have been marked for identification 2-6-76 (SA 2-6-76



(B) DEFENDANTS AND/OR SUSPECTS





VITED STATES GOVERNMENT lemorandum

U.S. SECRET SERVICE FILE #

DATE: 3-24-76

- Counterfeit Division

FROM

- New York

SUBJECT:

Seizure of Printing and Photographic Equipment

Reference is made to the M/R of SA 2-24-76, under file number outling the seizure of the counterfeit note production plant in this case.

The equipment seized in this case is described as follows:

One (1) ATF Chief 15 offset printing press, model 5-2419, serial # DB-990.

Condition when seized - good Approximate value - \$500.00

2. One (1) Nu ARC Rapid Printer Vacuum table, model FT-18-1, serial # 36601-1.

Condition when seized - good Approximate value - \$200.00

One (1) Nu ARC light table, model LT-23, serial # 215912-48.

Condition when seized - good Approximate value - \$50.00

4. One (1) Kenro vertical "18" camera, serial # K 798 343.

Condition when seized - good Approximate value - \$500.00

The aforementined equipment is being held in evidence against the defendants in this case.

After Judicial 1205

Completen

127

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

76 CRIM. 0146

United States District Court

SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

JAMES F. HEIMERLE and HAROLD ROSENBERG,

Defendants.

INDICTMENT

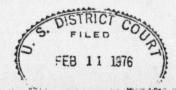
76 Cr.

THOMAS J. CAHILL

United States Attorney.

A TRUE BILL

Foreman.



JUDG hazetones settlemed lefge me at 5140 0 mm. 2/11/76 metter ?. EB 24 1974 Deft Humel (att, mubel B Polled guest) Pleade not gently. (Jant) (May fined \$50,000 But But But Thetynes. 23 1976 Head Resemberg (atty Frank a Topes pount)

d Planck met guelte. Bul continued (8,500.chm) Caregned metines of me Tenny f 1976 jury impossible and swoon, treat begun.
1976 Juil instruct. MAY 3 Isial continued and concluded.

Defindant Hermits guelty on each count, 1-2:3-4 Defendant Basentung glietty In each count 4. S. S. ordered. Similare June 4, 1976. Buil continued as to each dymalout. The defendant with his atty frumt you sentenering. Seven (7) yes on each of counts One and Two To sun concurrently with each other. Five (5) yes on count four to run concurrently with sentence imposed on each of counts One n and Two. surfereded on Count Imposition of sentince is to commence you Three, prototion Five y's R) superstances from the second 4. each of counts 1-2-and Defendant remanded JUN 25 1976 the defendant Harold Sounding with his alty present for sintenering. On year on lound three. I.S. S. on count (4) four probetion three yes to commence upon simplicain of smitmes imposed or court Shine. Defindant appresed of his right to diferent

Bail in the amount of \$ \$ 500.00 rail in and its be rewritten pending appeal.

- ce

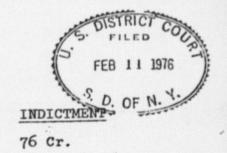
UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

JAMES F. HEIMERLE and HAROLD ROSENBERG,

Defendants.



76 CM 0146

COUNT ONE

The Grand Jury charges:

On or about January 28, 1976, in the Southern District of New York, JAMES F. HEIMERLE, the defendant unlawfully, wilfully and knowingly did sell, exchange, transfer and deliver certain false, forged, counterfeited and altered obligations and other securities of the United States, to wit, fifty (50) counterfeited one hundred dollar Federal Reserve notes with the intent that the same be passed, published, and used as true and genuine.

(Title 18, United States Code, Section 473).

COUNT TWO

The Grand Jury further charges:

On or about February 2, 1976 in the Southern District of New York, JAMES F. HEIMERLE, the defendant, unlawfully, wilfully and knowingly did sell, exchange, transfer and deliver certain false, forged, counterfeited and altered obligations and other securities of the United States, to wit, fifty (50) counterfeited one hundred dollar Federal Reserve notes with the intent that the same be passed, published, and used as true and genuine.

(Title 18, United States Code, Section 473).

COUNT THREE

The Grand Jury further charges:

ROFILM 813ES On or about February 6, 1976, in the Southern District of New York, JAMES F. HEIMERLE and HAROLD ROSENBERG, the defendants, unlawfully, wilfully and knowingly did sell, exchange, transfer and deliver certain false, forged, counterfeited and altered obligations and other securities of the United States, to wit, three hundred and twee six (326) counterfeited one hundred dollar Federal Reserve notes with the intent that the same be passed, published, and used as true and genuine.

(Title 18, United States Code, Sections 473 and 2).

COUNT FOUR

The Grand Jury further charges:

From on or about January 28, 1976, in the Southern District of New York and elsewhere, JAMES F. HEIMERLE and HAROLD ROSENBERG, the defendants, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other and with other persons to the Grand Jury unknown, to violate Section 473 of Title 18, United States Code.

and their co-conspirators unlawfully, wilfully and knowingly, would sell, exchange, transfer and deliver false, forged, counterfeited and altered obligations and other securities of the United States, to wit, three hundred and twenty-six (326) One Hundred Dollar Federal Reserve notes with the intent that the same be passed, published and used as true and genuine.

Overt Acts

In furtherance of said conspiracy and to effect the object thereof, the defendants and their co-conspirators committed and caused to be committed the following overt acts, among others, in the Southern District of New York:

a. On or about January 28, 1976, the defendant JAMES F. HEIMERLE met & Special Agent of the United States Secret Service, who was operating in an undercover capacity.

b. On or about February 2, 1976, the defendant JAMES F. HEIMERLE met a Special Agent of the United States Secret Service, who was operating in an undercover capacity.

c. On or about February 6, 1976, the defendant HAROLD ROSENBERG delivered a package containing three hundred twenty-six (326) counterfeited one hundred dollar Federal Reserve notes to the defendant JAMES F. HEIMERLE in the presence of a Special Agent of the United States Secret Service, who was operating in an undercover capacity.

(Title 18, United States Code, Section 371).

THOMAS J. CAHILL United States Attorney

A TRUE COPY

RAYMOND F. BURGHARDA

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

76 cr. 146

JAMES F. HEIMERLE,

Defendant.

NOTICE TO THE COURT THAT THE ABOVE-HAMED DEFENDANT IS A DANGEROUS SPECIAL OFFENDER

Now comes the United States, by and through its attorney, Alan R. Naftalis, Special Attorney, United States Dapartment of Justice, who is charged with the prosecution of the above-named defendant before the United States District Court for the Southern District of New York for alleged violations of Title 18, United States Code, Sections 371, 473, which are felonies committed when the defendant was over the age of 21 years, and hereby files this notice with the Court, in compliance with the provisions of Title 18, United States Code, Section 3575(a), stating that upon conviction to said felonies this defendant is subject to the imposition of sentence under Title 18, United States Code, Section 3575(b) as a dangerous special offender.

I do believe that said defendant is a dangerous special offender for the reasons that such felonies constituted a part of a pattern of conduct which was criminal under applicable laws of this jurisdiction, which constituted a substantial part of the defendant's income, and in which the defendant has manifested special skill or expertise, all within the meaning of \$3575(e)(2) of Title 18, United States Code. This defendant has committed other offences of a

counterfeiting and forgery nature prior to the instant offenses; has committed the present offenses within a short time after being paroled from a prior federal counterfeiting

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conviction and that this defendant was in fact on parole at the time he committed the instant offenses.

Respectfully submitted,

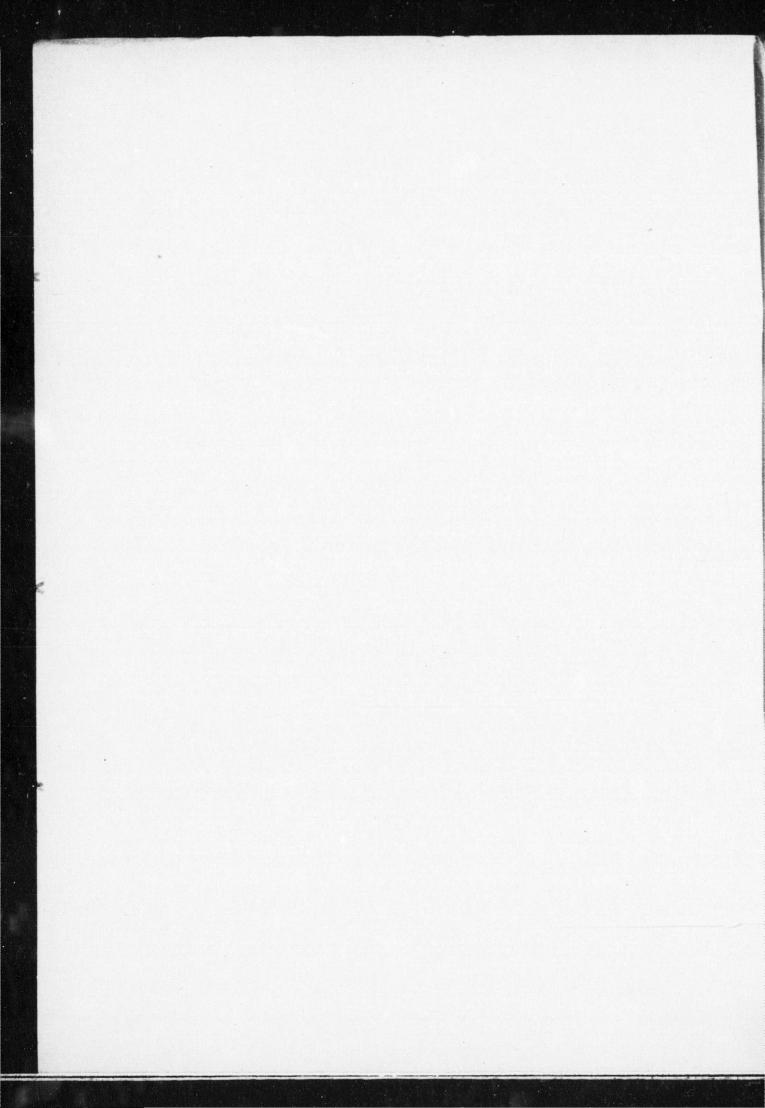
ALAN R. NAFTALIS Special Attorney U.S. Department of Justice

Date

This notice having been filed with the Court prior to trial, the Clerk of the Court shall forthwith cause a copy of this notice to be delivered to the defendant named above and to thereafter place this notice under seal, not to be subject to subpoena or public inspection nor to be delivered to the presiding judge in this case, except upon further order of the Court, all as required by Section 3575(a) of Title 13, United States Code.

Date

HONORABLE CHARLES H. TENNEY United States District Judge



UNITED STATES DISPRICT COURT COURT COURTER DESTROY OF MAY YORK

SETTING CHANTE OF AMERICA

: v -

RICHARD FARMS,

Defendant.

THOT COMPTIES

75 Cr.

The Orend Juny charger: .

the Joutharn District of New York, SignaRD Ward. the defendant. unlawfully, willfully and knowingly and with intent to defraud, did pass, which publish and sell, and attempt to pass, utter, publish and coll, falsely made. forgot, counterfeited and altered obligations and other securi les of the United States, to wit, approximately forty thousand dollars in counterfeit. Federal Jonatic Motors.

for the 18. inited States Code. Section 472.)

MUNT B. FISKE, Jr.

United States Attorney

WICKOFF A

United States District C

SOUTHERN DISTRICT OF NEW YOR

THE UNITED STATES OF AME

vs.

JAMES F. HEIMERLE; RICHARD G. WARME, a/k/a Richard Warner, BERNARD HORWITZ and JOSEPH PETERS,

Defendan

INDICTMENT

76 Cr.

ROBERT B. FISKE, Jr.

United States At

A TRUE BILL

Charles & Fink

PI-88-1-13-70-20M'-4925



MAY 7, 1976 BERNARD HORWITZ (atty John P. Curley present) FNG Bail fixed at \$10,000. P.R.B. (unsecured) to be post ourt by c.o.b. May 10, 1976. POLIACK, J. RICHARD G. WARME (atty Jeffrey Weingard present) FNG Deft. contd. on bail of fixed in indictment 76 CR. RICA Deft. waives the six(6)month rule. 10 days for moti (.J. Greenberg, Rptr.) MAY 11 1976 JAMES F. HEIMERLE(atty Michael Pollack present) PNG -BAXXXXXXX bail of \$50,000 fixed in 76 CR. 146 by Judge Metzner to this indictment, in addition the deft. is to post and additional \$25,000. to cover this indictment. Deft. Remande lieu of bail totalling \$75,000. POLLACK, J. ts, (M. Deutsch, Rptr.) JUL 26 1976 JOSEPH PETERS (atty Daniel Murphy, II present) Case called. POLLACK, J. Plea NOT Accepted, by the Court. (M. Cohen, Rptr.) JUL 27 1976 Joseph Peters (act, want muchy present how Pleach handly as to lount one, For sentime sight , 20,1976 at 3 orney Rm 506. Buil Contil (In. C. Kin, Repte) BURNAME TORWITE (abby John P. Jurley present) NOW GUILTY as to at. 1. - Fre-sections report progress. SEP 17 1976 eman sentance Oct. 18, 1976 at 9:45 A.T., Pm. 128. Be (H. Brow , Rote.) SEP. 17,1975 -FTGHARD WARME (esty Jerrey tein and procent) HEARING BUREN AND SCHOLLED ON TOTTON TO SUPPRIS -MORION DETERMINE TO CLAMA, J. (H. Br. ... Bot ...) SEP 27 1976 JAMES F. HEIMFRIE (atty Victor) Pol RICHARD 3. WINTE (att, Jaffrey Weingard present)

iP 28 1976 TRIAL CONTY. DEFT. RICHARD MADIE Failed to appear in Court.

2:40 A.M.) Then and application of the Port. the different ball is revoked,
and a banch warrant is ordered. Philack, J.

2:10 2.M.) DEFT. MACH (present in dough) Bail is coinsisted and the brack Madient
is vacated. Pollack, J.

SEP 29 1976 TRIAL CONTO. All parties root. All mediens of both defts are denied.

Joy begins deliberating at 5 . B.
OCT 1- 1976 TRIAL CONTO. Sury resumes deliberating at 10 .M. --PAPTIAL TERDIOT--(12:20 2.M.) --OTA DEFTS. Survey Matter on Defts. Jury Polled.

Jury response deliberating. ==(7:05 P.M.) Jury disagreement as to

counts 2,3 and 4. Upon motion of both defense attorneys a mistrial
is declared as to cts. 2,3 and 4. Jury discharged. -BOTH DEFTS. ---Pre-sentence report ordered. For sentence Nov. 15, 1976 at 10 A.M.,

Rm. 518. Deft. HEIMERLE REMANDED. Deft. WARME CONTO. ON BAIL.

OCT 2 8 1976

(M. Padgug, Rptr.

The imposition of cutters of this Court. POILACK, J. (IL.Cohen, Rptr.)

POLLACK,. a.

Sentenced on count 1 persuant to T. 19, U.S.C. Section 371 and as DANGEROUS DEED IL OPERIDED persuant to T. 73, U.S.C. Section 3575 a DANGEROUS DEED IL OPERIDED persuant to T. 73, U.S.C. Section 3575 a DANGEROUS DEED IL OPERIDED persuant to T. 73, U.S.C. Section 3575 a DANGEROUS DEED IL OPERIDED persuant to T. 73, U.S.C. Section 3575 a DANGEROUS DEED IL OPERIDED persuant to T. 73, U.S.C. Section 3575 a DANGEROUS DEED IL OPERIDED persuant to T. 73, U.S.C. Section 3575 a DANGEROUS DEED IN TAKE TO THE PERSON OF THE PE

NOV. 16, 1976 TOWARD G. WAREE, a/K/a bickerd Warner (sty Jeffrey Weingar) present) supposed TERRE YEARS on count 1. One to 1,3 and he are also see upon ration of deftis counted with a count of the jevt. Deft. adviced of his right to appeal. -- Deft. R The DEF in Jevt. Deft adviced of his right to appeal. -- Deft. R The DEF in forthwith with the superty company in regret to the confict forthwith with the superty company in regret to the confict written so as to cover 76 CP. h/2 on the fellow as to this the ceft. best been settenedd. Follow, J. (G. Holf, Spir.)

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UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

760ML 0442

UNITED STATES OF AMERICA

-v- :

JAMES F. HEIMERLE, RICHARD G. WARME, a/k/a Richard Warner, BERNARD HORWITZ AND JOSEPH PETERS,

Defendants.

INDICTMENT

76 Cr.



COUNT ONE

The Grand Jury charges:

- 1. From on or about November 1, 1975, up to and including February 29, 1976, in the Southern District of New York and elsewhere, JAMES F. HEIMERLE, RICHARD G. WARME, a, k/a Richard Warner, BERNARD HORWITZ, and JOSEPH PETERS, the defendants, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other and with Frederick Glock and Angelo Oliveri, deceased, named herein as co-conspirators, but not as defendants, and with other persons, to the Grand Jury known and unknown, to violate Section 473 of Title 18, United States Code.
- 2. It was a part of said conspiracy that said defendants and their co-conspirators unlawfully, wilfully and knowingly, would buy, sell, exchange, transfer, receive and deliver false, forged, counterfeited and altered obligations and other securities of the United States, to wit, twenty dollar, fifty dollar and one hundred dollar Federal Reserve Notes, with the intent that the same be passed, published and used as true and genuine.

- 3. In furtherance of said conspiracy and to effect the objects thereof, the defendants and their co-conspirators committed and caused to be committed the following overt acts, among others, in the Southern District of New York and elsewhere:
- a. In November, 1975 the defendants JAMES F. HEIMERLE and JOSEPH PETERS mat.

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b. In or about December, 1975 the defendants RICHARD G. WARME, JOSEPH PETERS and BERNARD HORWITZ drove to Kennedy Airport, Queens, New York.

- c. On or about December 10, 1975, the defendant RICHARD G. WARME gave defendant BERNARD HORWITZ a counterfeit \$100 Federal Reserve Note.
- d. In or about December, 1975 the defendant BERNARD HORWITZ traveled to Las Vegas, Nevada from Queens, New York.
- e. In or about January, 1976, the defendant RICHARD G. WARME, met with co-conspirator Frederick Glock in the Bronx, New York.
- f. Between December 1975 and January 1976, the defendants JAMES F. HEIMERLE, RICHARD G. WARME, BERNARD HORWITZ and JOSEPH PETERS met.
- g. In or about January 1976, the defendant RICHARD G. WARME met with co-conspirator Angelo Oliveri in Irvington, New York, and gave him counterfeit Federal Reserve Notes.
- h. On or about January 4, 1976, the defendant JAMES F. HEIMERLE met with the defendant RICHARD G. WARME in Dobbs Ferry, New York.

(Title 18, United States Code, Section 371)

COUNT TWO

The Grand Jury further charges:

In or about December, 1975, in the Southern District of New York, JAMES F. HEIMERLE and RICHARD G. WARME, a/k/a Richard Warner, the defendants, unlawfully, wilfully and knowingly did buy, sell, exchange, transfer, receive and deliver certain false, forged, counterfeited and altered obligations and other securities of the United States, to wit,

counterfeited one hundred dollar Federal Reserve Notes with the intent that the same be passed, published, and used as true and genuine.

(Title 18, United States Code, Sections 473 and 2)

COUNT THREE

The Grand Jury further charges:

In or about January, 1976 in the Southern District of New York, JAMES F. HEIMERLE and RICHARD G. WARME, a/k/a Richard Warner, the defendants, unlawfully, wilfully and knowingly did buy, sell, exchange, transfer and deliver certain false, forged, counterfeited and altered obligations and other securities of the United States, to wit, counterfeited twenty and fifty dollar Federal Reserve Notes with the intent that the same be passed, published, and used as true and genuine.

(Title 18, United States Code, Sections 473 and 2)

COUNT FOUR

The Grand Jury further charges:

In or about Dewember, 1975, in the Southern District of New York, and elsewhere, JAMES F. HEIMERLE and RICHARD G. WARME, a/k/a Richard Warner, the defendants, unlawfully, wilfully and knowingly did transfer and deliver certain false, forged, counterfeited and altered obligations and other securities of the United States, to wit, counterfeited one hundred dollar Federal Reserve Notes with the intent that the same be passed, published, and used as true and genuine.

(Title 18, United States Code, Sections 473 and 2)

Charles & Fink

ROBERT B. FISKE, Jr. United States Attorney

A TRUE COPY RAYMOND F. BURGEN DA

By M. C. Mew Dopaty Clerk

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK UNITED STATES OF AMERICA >6 CRIM. 442 MA -against-I have been informed in open court on this date of my constitutional rights in the above entitled case, and I have read and fully understand the following statement. I have received and read a copy of the indictment or information and understand the nature of the charges made against me. told my attorney all I know about the matters referred to in it. My attorney has explained to me the nature of the charges against me, my constitutional rights, and the punishment that could be imposed by the Court upon my plea of guilty. I understand that I have the right to plead not guilty or to continue to plead not guilty, and that if I plead not guilty to any count or counts of the indictment or information: (a) I would be presumed under the law to be innocent of the charges against me in such count or counts; (b) I would be entitled to a speedy, public trial by an impartial jury in which the burden would be upon the government to establish my guilt beyond a reasonable doubt to the satisfaction of all 12 jurors; (c) Upon such trial (i) I would be entitled to remain silent and no inference could be drawn against me because of my silence; (ii) I could, if I wished, testify on my own behalf; (iii) I would be entitled to confront and crossexamine all witnesses against me; (iv) I would be entitled to compulsory process of the court to obtain witnesses to testify and evidence to be offered in my defense; and (v) I would be entitled to have the assistance of counsel. I understand that if my plea of guilty to any count or counts is addapted by the court, I give up the foregoing rights with respect to such count or counts and the court will have the same power to sentence me as if a jury had brought in a verdict of guilty with respect to such count or counts. I also understand that if I plead guilty the court may ask me questions about the offense to which I have pleaded and that my answers may later be used against me in a prosecution for perjury or false statement. My decision to plead guilty is freely and voluntarily made. I have not been induced to plead guilty to any count by any promises or by any statement that I would receive leniency, a lesser sentence, or any other consideration if I plead guilty instead of going to trial. I have not been induced to plead guilty by any force, coercion, pressure or fear. I am pleading guilty because, after discussing the case with my attorney I believe that I am guilty. My attorney has advised me that he does not believe that there are any meritorious defenses to the count or counts to which I am pleading guilty and

that after discussing the facts with me he does not believe that any of my con-

, stitutional rights have been violated in connection with any interrogation of me or any statement or confession made by me, or in connection with my preperty, arrest or these proceedings.

I am not under the influence of any substance, such as narcotics or alcohol that would affect my ability to understand the nature and consequences of my action in pleading guilty.

Dated: July 26, 1976

Signature of Defendant

I, the attorney for the above-named defendant, have reviewed the foregoing with him, have explained to him the nature of the charges against him, his constitutional rights, and the punishment that could be imposed upon his guilty plea. I have also advised him that in my opinion he does not have any nor more our defense to the count or counts to which he is pleading guilty and that him constitutional rights have not such visitable.

There is & restained requesto married

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

ORDER PURSUANT TO 18 U.S.C.

\$ 4244

-v.- :

76 Cr. 442 (MP)

JOSEPH PETERS.

Defendant.

H. Murphy, II, sworn
g agreed to present no

Upon the annexed affidavit of Daniel H. Murphy, II, sworn to July 27, 1976, and the Government having agreed to present no opposition,

IT IS HEREBY ORDERED, pursuant to Title 18, United States
Code, Section 4244, that Dr. Gurston Goldin, M.D., a qualified
psychiatrist, be employed to examine the defendant JOSEPH PETERS,
to determine whether he is so mentally incompetent as to be
unable to understand the proceedings against him or properly to
assist in his own defense, and it is further

ORDERED that the doctor prepare a written report of his findings and conclusions, including his prognosis, and that the original report be submitted to the Honorable Milton Pollack, United States District Judge, on or before August 20, 1976, with a copy to the United States Attorney, Southern District of New York, Attention: Alan R. Naftalis, Special Attorney, and to Daniel H. Murphy, II, Esq., 233 Broadway, New York, New York, 10007.

Dated: New York, New York July 27, 1976 Michal Belock

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STATE OF THE PERSON OF THE PER

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v.- : AFFIDAVIT

JOSEPH PETERS, : 76 Cr. 442 (MP)

Defendant.

STATE OF NEW YORK)
COUNTY OF NEW YORK :ss.:
SOUTHERN DISTRICT OF NEW YORK)

DANIEL H. MURPHY, II, being duly sworn, deposes and says:

- I was appointed counsel for the defendant JOSEPH PETERS
 by order of the Magistrate entered May 20, 1976.
- I have spoken with the defendant JOSEPH PETERS on May 20 and July 26, 1976.
- 3. The defendant bears a two inch indentation in his upper forehead from being hit with an axe in a street fight when he was 11 years old. He was beaten in prison in 1943 so badly that his eyes were swollen shut for five days. He was a professional fighter for two and one-half years in 1948-51 with twelve fights (and one loss). On November 21, 1974, he was bending steel on a Stillwell machine when he was hit in the head by an 8-foot square sheet of plywood, his safety helmet was crushed and he was knocked unconscious for the first time in his life (for about one minute).
- 4. I spoke with him in preparing to enter this plea. He seemed unable to understand sentences which were longer than a few words. He was unable to do simple arithmetic (\$24,000 of counterfeit money at \$2,00 per \$100 is, according to him,

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\$2400 [not \$480.], etc.).

- 5. Although I recommend that the defendant JOSEPH PETERS plead guilty to conspiracy to distribute counterfeit money, I ask that his mental competency to plead be confirmed by an expert.
- 6. Dr. Goldin has been highly recommended to me both by an expert in the field with whom I amiliar and by the Government.

DANIEL H MURDAY, 117

Sworn to before me this 27th day of July, 1976

Potricia Denniger

PATRICIA DENIGAN
Motory Public, Sere of New York
No. 24-4618654
Qualified in Kings County
Commission Expires March 32, 1977

would be useful or that an immediate harring is necessary, a request should be made on the nistion papers or by letter.

Submit originals of ALL Motions and motion papers to the cle 's Office AND NOT TO

In civil cases when all discovery, motions, etc., have been completed to file a note of issue or a statement of readiness in the Clerk's Office.

All inquiries regarding calendar matters should be directed to Mr. Irving Weinberg between 9 A.M. and 9:45 A.M. Telephone Number 791-0925. Please do not call chambers at any other time regarding Calendar matters.

Requests for adjournments or continuance of trials, hearings or conferences must be in writing except in the event of unforseen illness of counsel, parties or witnesses.

Commencing Sept. 7, 1976 at 10 A.M. the following civil cases will be subject to call for trial in the order listed below on 24-hour telephone notice:

Escriptorio Suplicy v. Netumar Lines; Centrone China Merchants: Cohen v. Chen: Int'l Telemeter Teleprompter; Stretch v. Fisler; Jimlar Corp. v. S.S. Liberty Exporter; Vigo v. Liberty Exporter; Vigo v. Amer. Exp. Lines; Universal Marine Corp. v. Bristol Meyers Co.; Lamagna v. L.I.R.R. Co.; Sharfman v. Inness-Brown Consulting Co.; Interamerican Fruit v. S.S. Chilean Reefer; Alvarez v. Ogden Marine, Inc.; Matenciot v. David & Dash; Baker v. Marine Interests Corp.; Van Buskirk v. Blanchette; Martinez v. Nat'l Shipping: Eckhart v. Schubin; Martin Motor Sales v. Saab Scandia; Mersey Products v. Ampex Corp.; U.S.A. v. Moran Towing: A. Fantis, Inc. v. S.S. Concordia Love; McMillan v. Marine Sulphur Ship Corp.; Surrusco v. Port Schwartz v. Homowack Lodge; Lombardi v. Costa armatori; Patrick v. Borden; Marsella v. enn. Central; Beliard v. Isth mian Lines; Caro v. Park Steamship; Baroumas v. S.S. Ekaterini; Zingirdes v. Foreign Tankers; Martines v. Amer. Exp. Lines; Jastrzebski v. New York; Roveccio v. Ship. Corp. of India; U.S. Steel Int'l v. S.S. J. R. Gumuspaza; Mit-subishi v. S.S. Ciudad de Bogota; Chong v. Farrell Lines; Thyssen v. S. S. Victoria City: Reyes v. Farrell Lines; Petersburg Press v. Atlantic Container Line; Mezitis v. Foreign Enerlyy Tankers N.Y.C.L.U. v. Acito; Aryeh v. Northwestern Nat. Ins. Co.

Judge Owen

Judge Owen will be in Courtroom 318, for August and September. Motions before Judge Owen unless brought on by order to show cause, shall be made returnable on notice. Until the completion of U.S.A. V. Alvarez trial, motions to be argued shall be made returnable on alternate Fridays at 2:30 P.M. beginning on Friday. September 17, at 2:30 P.M.

Judge Poliack Hearings and Trials Courtroom 128

Mayor v. Toia—Hearing concluded. Application for a preliminary injunction is denied.

U.S.A. v. Nachmani and Cohen-Trial, Sept. 13, at 10 A M.

U.S.A. v. Heimerie, Warne, Horowitz-Trial, Sept. 13, at 10 A.M.

British Airways v. Port Authority—Hearing on a preliminary injunction, Sept.

Maniugan v. A/S Facto-

Agricultural Inst. v. Simms-Trial, Sept. 20, at 11 A.M.

Restaurant Associates v. Anheiser Busch—Trial, Sept. 21, at 2 P.M.

Motions and Applications
Any party wishing to make
any motion should arrange for
a conference with Judge Pollack prior to the preparation
and submissions of motion

A conference may be scheduled by calling chambers (212) 791-0949 to the extent that motions can be disposed of upon oral presentation at the conference this will be done. If papers are necessary the issues to be dealt with will be defined in the conference.

Motions, Courtroom 133,
Heittel v. Weil—Sept. 17, at

Judge Tenney

Chambers will not accept any calls relating to motions or calendar matters, unless before 10 A.M. or after 4 P.M.

Please note that unless brought on by order to show cause, motions may be made returnable before Judge Tenney in chambers, Room 1904, at any time, giving ten (10) days notice to your acversary. Oral argument will be heard only at the discretion of the court. Communicate this request to chambers by letter, giving the following information.

The reason why oral argument is necessary for determination of the motion.

A time estimate of how long argument will take.

Note that all motion papers must be in the judges chambers at least three (3) days before the schedule date for oral argument.

In all jury cases proposed voir dire and requests to charge must be submitted in chambers, Room 1904, at least five days in advance of the trial

Please be advised that Judge Tenney requires a note of issue to be filed in all cases; when placing a case on trial calen-

All cases on the Ready Calendar will be on 24-hour notice for trial.

Jordan v. Malcolm—Hearing today at 10 A.M., Courtroom

U.S.A. v. Sulliveres — Sentence, Sept. 13, 1976 at 10 A.M. Courtroom 795. v. Roggen.

All phone calls regarding calendar matters should be made between 9 A.M. and 9:30 A.M. to Deputy Clerk John Gragnano. Telephone 791-1088 (Please do not call chambers).

Motions for Sept. 14, 21, 28 shall be made returnable at 2:15 P.M., in Room 908 Civil and Criminal Motions returnable before Judge Weinfeld, unless brought on by order to show cause, shall be made returnable on Tuesday, at 2:15 P.M. Said motions should be made on notice as required under applicable rules. Oral Argument on all motions will be heard unless counsel are advised to the contrary.

All supporting and opposing papers (in duplicate) and stipulations should be delivered directly to chambers by the preceding Friday afternoon. No later than 5 P.M.; papers submitted subsequent to that time will not be accepted.

Judge Werker

Any party wishing to make any motion except those noted below should arrange for a conference with Judge Werker prior to the preparation and submission of motion papers.

All applications for temporary restraining orders and for injunctive relief and all motions involving persons in custody may be brought without a premotion conference.

A conference may be scheduled by calling chambers —791-0953. All calls to chambers must be made between 9 and 10 A.M. or after 4 P.M. Motions will be resolved at the conference to the extent

possible.

If at the conference papers are found to be necessary, the issues to be dealt with will be defined at that time. Such motions should be made returnable in chambers, Room 607E, and may be made returnable on any business day. Motion papers must be served 10 days before the return date. Answers are due 3 days before the return date, and the reply.

if any, is due on the return date. All papers are to be filed with the clerk of the court, not in chambers. Oral argument will not be heard unless directed by the court.

Subsequent to the completion of discovery, parties are required to submit a pre-trial order which must conform to the procedure outlined at 65 F.R.D. 475, 481-82.

Requests to charge and proposed voir dire in all jury trials are due one day before trial.

Hearings and Trials

U.S.A. v. Quintan-Hearing, Sept. 8, at 11 A.M. U.S.A. v. Petrucelli-

Verdict. State Mutual v. Arthur Anderson-Trial, Sept. 13, 10

Siskind v. Goodman-Hearing, Sept. 30, 10 A.M. Judge Werker

Courtroom 312 Judge Owen AI

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Courtroom 318
Jusge Duffy

Courtroom 501 Judge Goettel

Courtroom 518

Judge Carter Courtroom 519

Judge Frankel

Judge Pierce Courtroom 619

Judge Tenney Courtroom 703

Judge MacMahon Courtroom 706

Judge Wyatt Courtroom 905 Judge Weinfeld Courtroom 906

Judge Motley Courtroom 110 Judge Bonsal

Courtroom 1106 Judge Lasker

Courtroom 1305 Judge Cannella

Courtroom 1306 Judge Griesa Courtroom 1505

Judge Brieant Courtroom 1596 Judge Stewart

Courtroom 2704

Judge Knapp Courtroom 2704

Judge Cooper Courtroom 2804

EASTERN DISTRICT

On motions under Rule 9(c) of the General Rules of this court (relating to exceptions or objections to interrogatories, etc.) the clerk requests that a copy of the complete motion papers be submitted in addition to the original motion papers at the time of filing.

Lewis Orgel Clerk 42.

100

Dispositions

Judge Neaher 115 Supermarket Inc. v. Butz-On trial.

Judge Pratt U.S.A. v. Seiden-On trial.

Calendars

NOTICE

The cases formerly assigned to Judge Orrin G. Judd will be reassigned and notice of the reassignment will be sent by mail. Counsel are requested to await such notification and not to telephone for information.

Lewis Orgel Clerk of Court

Chief Judge Mishler Courtroom 5-4th Floor

9:30 A.M.

76-528 U.S.A. v. Robert Miller 76-1599 International Ass'a. of Machinists & Aermspace Workers v. Compagnie Nationale Air France n Fridays at 10 should be made applicable rules, cular, Local Rule ich will be strictly e originals of all motion papers ubmitted to the e for filing and copy of all such be furnished to On or after the he papers will be d the court will cision or set the n for oral arguif the latter is

cases, the followis must be submiters, Room 2904, at days in advance readiness date as he Law Journal: a agreed facts; in ng legal citations. d voir dire queson-jury cases. lings of fact and of law with sup tions, and brief f the salient pe deposition to be

all trials are to be with exhibit tags he documents. At of Triel, a comtra documentary ld be handed to d a list of all exbe supplied to the puty clerk and to

Y. SEPT. 20 hannon, U.S.A. v. z v. Ward— 9:30 v. Moran-10

Y, SEPT. 21 Johnson, Hess v. Benco Int'l. v. 30 P.M. Mills-10 A.M.

AY, SEPT. 22 re, Haoper & erences. Haley-10 A.M.,

Duffey-10:30

Y. SEPT. 23 rods. v. ABC-Pre-trial con-SEPT. 24

Prudential. of New York. e. Stevenson v. ne Trust, Comrigid Truck. A.M., Pre-trial

ar Diagnostic. Prudential h v. Smith, "Iran, Niru", hen. Hunt v t Lines-10:30

alversal, Cip-Mercante. xbaum, Chiro te, Shaver v. 11 A.M.

with will be defined at the con-

Provided adequate notice is given, any business day may be noticed as the return day. Motions should be made retur nable to Chambers, Room 1903. Submit originals of ALL mo tion papers to Room 17 (lower lobbys, for filing and docketing. Deposti copies in Chambers. Counsel requesting a pre-motion conference or a pre-trial conference with the court shall contact the Deputy

All phone calls should be made between 9 A.M. and 9:45 A.M. or after 4 P.M. to Deputy Clerk, Ms. Phyllis McKee 791-1013. Do not call chambers.

U.S.A. v. Bennett; U.S.A. v. Spencer; U.S.A. v. Berlin- --Sentences, Sept. 17, 10 A.M., Room 1305.

Murswin v. Knutsen-Trial continued, Sept. 20, 10 A.M., Room 1305.

> Judge MacMahe Room 706

All civil motion returnable on Sept. 17, 1976 will be taken on submission. After the return date the papers will be studied and the court will either render its decision or set the matter down for oral argument. Counsel will be notified by telephone if oral argument is required. Submit all papers to the clerk's office for docketing. All telephone calls regarding calendar matters should be made to Mr. Kownacki. Tel.: 791-1018

Civil Calendar

The following civil cases are ready for trial upon a short notice by telephone and will be tried substantially in the order listed:

Nautique Itd. v. I.N.A. DiCristona v. Companio Maritime San Basikio

Burguillo v. U.S.A.: Fontanez v. A erican Export; Jackson v. Sec. H.E.W.; Glemby Co. v. District 65-Pre-trial conferences, Sept. 20, 4:30

Smith v. Jackson-Conferen, Sept. 21, 4:30 P.M.

Local 169 v. Time Out Fashion; Labugh v. U.S. Dept. of Agrig.—Conferences, Sept. 21, 10 A.M.

Criminal Calenda: U.S.A. v. Sealy-Trial, Sept. 20, 10 A.M.

U.S.A. v. Monson-Sept. 20, 2 U.S.A. v. Kelner-Hearing, Sept. 21, 10 A.M.

Judge Metzner

All motions before Judge Metzner will be submitted un less a party requests oral argument in writing In that event the parties will be notified by Judge's Chambers of th date and time for such argu-

Motions should be made returnable pursuant to the ap plicable rules in Room 2201, All papers should be filed with the clerk's office.

Bernadine v. Wilhelmsen-Trial, Sept. 17, at 10 A.M., in Poom 35

U.S.A. v. R. Bell--Sentence Sept. 22 at 10 A.M. in Room 35.

Iran Nat. Airlinwe: Upton v. The Pahlavi Foundation; Coello v. Imm. nat. Serv.; Morin v. Rederi A-B Falen; Marubeni America corp. v. SS. Grena; Hellenic Bulk Transport v. Burmah Oil Tankers ltd.; Assoc. Metals & Minerals v. Luria Bros.; Indiana Farm Bureau v. Philipp Bros. Chem.; Ian-nacone v. United States Lines; Donovan v. U. S. Dept. of Justice—Room 33' Sept. 23.

Judge Motley

Unless brought on by order to show cause, motions may be made returnable on any business day on notice as provided by applicabel court rules. There will be no oral argument unless a date for this set by the court. Counsel therefore, should not appear on the return date unless specifically directed to do so.

If it is felt that oral argument would be useful or that an immediate hearing is necessary,a request should be made on the motion papers or by letter.

Submit originals of ALL Motions and motion papers to the clerk's Office AND NOT TO CHAMBERS.

In civil cases when all discovery, motions, etc., have been completed to file a note of issue or a statement of readiness in the Clerk's Office

All inquiries regarding calendar matters should be directed to Mr. Irving Weinberg between 9 A.M. and 9:45 A.M. Telephone Number 791-0928. Please do not call chambers at any other time regarding Calendar matters.

Requests for adjournments or continuance of trials, hearings or conferences must be in writing except in the event of unforseen illness of counsel, parties or witnesses.

Commencing Sept. 7, 1876 at 10 A.M. the following civil cases will be subject to call for trial in the order listed below on 24-hour telephone notice:

Escriptorio Suplicy v Netumar Lines: Centrone China Merchants: Cohen Chen; Int'l Telemeter v Teleprompter; Stretch v. Fisler; Jimlar Corp. v. S.S. Liberty Exporter; Vigo v. Amer. Exp. Lines; Universal Marine Corp. v. Bristol Meyers Co.; Lamagna v. L.I.R.R. Co.; Sharfman v. Inness-Brown Consulting Co.; Interamerican Fruit v. S.S. Chilean Reefer; Alvarez v. Ogden Marine, Inc.: Matenciot v. David & Dash; Baker v. Marine Interests Corp.; Van Buskirk v. Blanchette; Martinez v. Nat'l Shipping; Eckhart v. Schubin; Martin Motor Sales v. Saab Scandia; Mersey Products v. Ampex Corp.; U.S.A. v. Moran Towing; A. Fantis, Inc. v. S.S. Concordia Love; McMillan v. Marine Sulphur Ship Corp.; Surrusco v. Port Auth.; Surrusco v. Port Auth.; Schwartz v. Homowack Lodge; Lombardi v. Costa armatori; Patrick v. Borden, Marsella v. Penn. Central; Beliard v. Isthmian Lines: Caro v. Park Steamship: Baroumas v S.S. Ekaterini: Zingirdes v. Foreign Tankers, Martinez v. Amer. Exp. Lines, Jastrzebski v. New York; Roveccio v. Ship.

Moohr v. Cross Cty. Cab --Settlement Conf. Oct. 12, 9:15 in Chambers

Stimas v. Marine Transport Lines-Trial 9:30 A.M., Sept.

U.S.A. Guthrie Conference Sept. 27, 4:45 P.M. U.S.A. v. Carlucci-Sentence 4:30 P.M., Sept. 28.

READY TRIAL CALENDAR

All counsel must be prepared to proceed to trial on 48-hour notice and not necessarily in the order in which they are listed below:

Moohr v. Cross City Cab; Enquire Ptg. v. Ilmac Corp.; Wang v. NYC; Walters v. Nautilus Petroleum Carriers; Scarves by Vera v. Lawtex Corp.; Hanley v. Charente S8. Co., Ltd.; Knoch Oil v. Motor Tanker Oricio: Oken v. C & S Securities: In re Complaint of Guynedd Corp.; Moreillo v. arnley; Hamiltion v. Collins Shipping: Schimansky v. Moduline Industries; Graves American Export Lines: Vis-

> Adjourned Sept. 10, 9:30 A.M.,

Kiley v. Wright; Apt v. Holt, Rinehart, & Winston Inc ; H. L. Federman & Co. v. Greenberg: General Ins. Co. v. Santiren Shipping Ltd; v. Republic of India: Plaza Mills Inc. v. U.S.A.: atz v. Wexler; SEC v. Medic Home Enterprises Inc.; ore v. Levi; Elkin v. Board of Education; ITT v. World Wide Shipping Corp.; Philipp Bros. v. SS Oriental Ruler; Bros. Dominion Road Machinery Co. v. D. B. Deniz; Nippi Boeki Kaisan v. U.S.A.; Lewis v. U.S.A.; Hayward v. Rice.

Judge Pollack Hearings and Trials Courtroom 128

Maniugan v. A/S Facto-Case settled during trial. U.S.A. v. Sawley Assam— Probation violation hearing.

U.S.A. v. Heimerie, Warne, Horowitz-Suppression ing. Sept 17, at 10 A.M. hear-

Agricultural Inst. Simms-Trial, Sept. 20, at 11 A.M.

U.S.A. v. Nachmani and Cohen-Trial, Sept. 21, at 10

Restaurant Associates v. Anheiser Busch-Trial, Sept. 21, at 2 P.M.

Ohringer v. Munsingwear-Trial, Oct. 1, 10 A.M.
Williams v. N.Y.C.—Trial,
Oct. \$, 10 A.M.

Perez v. Ali-Trial, Oct. 12, 10 A.M.

McKean v. Lindsey; Byrd v. Sunexport Holding-Trials to follow

> Sentences Courtroom 128

U.S.A. v. McGuinness -Sept. 16, at 10 A.M., Room 128.

U.S.A. v. C. Kaufman-Sept 20, 11 A.M., Room 506. U.S.A. v. Messina-Sept. 20,

at 11 A M U.S.A. v. Caruso, D'Addario, DiTuri, Faranda, Latella and Annatone-Sept. 20, at 11:30

U.S.A. v. Wilkinson-Pre trial conference, Sept. 16, 11 A.M., Room 2703.

Kavasick v. American Recreation-Sept. 17, 2 P.M., Room 2703.

Eastern Trans Atlantic Corp. Cittevio-Pre-trial hearing on motion. Sept. 17, 3 P.M.

Judge Tenney

Chambers will not accept any calls relating to motions or calendar matters, unless before 10 A.M. or after 4 P.M.

Please note that unless brought on by order to show cause, motions may be mad returnable befor Judge Tenney in chambers, Room 1904, at any time, giving ten (10) days notice to your adversary. Oral argument will be heard only at the discretion of the court Communicate this request to chambers by letter, giving the following information.

The reason why oral argu-ment is necessary for determination of the motion.

A time estimate of how long argument will take.

Note that all motion papers be in the judges chambers at least three days before the schedule date for oral argument.

In all jury cases proposed voir dire and requests to charge must be submitted in bers, Room 1904, at least five days in advance of the trial

Please be advised that Judge Tenney requires a note of issue to be filed in all cases: when placing a case on trial calen-

All cases on the Ready Calendar will be on 24-hour notice for

Rutherford v. U.S. Life-

Trial continued. U.S.A. v. Brack-Plea, to-day, 9:30 A.M., Room 705.

U.S.A. v. Jukovsky-Plea, today, 9:45 A.M., Room 705. U.S.A. v. Comontak-Pre-trial conference, today, 1:43 P.M., Room 705. N.Y. Creditmen's v. National

Apparel-Conference, Sept. 17, 9:45 A.M., Room 705.

Judge Ward

Courtroom 307, September and October Chambers telephone 791-0221.

Motions returnable before Judge Ward unless brought on by order to show cause, shall be made returnable on Tuesdays at 2:15 P.M. Said motions ould be made on notice as required under applicable rules and motion papers should be submitted to Unit 1. Lower Lobby for docketing. All documents filed are to have the in-itials "RJW" after the docket number on or after the return day and the court will study the papers and either render its decision thereon or schedule oral argument if that is deamed desirable

Sentences Ordner-Sept. 16. at 9:30

A.M. Debra Green-Sept. 16, at 9:45 A.M.

Watson-Sept. 16, at 2 P.M. Rivera-Sept. 17, at 9.30 Gardner-Sept 17, at 9:45

to have their case placed on perfied in the Law Journal: a latement of agreed lacts; in jury cases, proposed charges with supporting legal citations. and proposed voir dire questions; in non-jury cases proposed findings of fact and conclusions of law with sup-porting citations, and brief summaries of the salient portions of each deposition to be offered in eviden

Exhibits in all trials are to be pre-marked with exhibit tags ched to the documents. At the beginning of trial, a complete set of extra docume exhibits should be handed to the court, and a list of all exhibits should be supplied to the courtroom deputy clerk and to

TUESDAY, SEPT. 21 U.S.A. v. Johnson, Hess v. Dubrow-9:30 A.M., Pre-trial conferences. Benco Int'l. v. Karahalla, 4:30 P.M.

McCarey v. Mills-10 A.M.,

WEDNESDAY, SEPT. 22

Zissu, Lorre, Hacper & cobson v. Feiffer-9:30 A.M., Pre-trial Conferences Charles L. Haley-10 A.M.,

entencing. Ballon v. Duffey-10:30

A.M., Trial THURSDAY, SEPT. 23

Mulberry Prods. v. ABC-9:30 A.M., Pre-trial con-

FRIDAY, SEPT. 24

Parker v. Prudential. abrach v. City of New York, Goshen v. Chase, Stevenson v Chinese Maritime Trust, Com pagino v. Frigid Truck, Romero v. Reederei, Sarlo v. Reederel-9:30 A.M., Pre-trial

ICC v. Nuclear Diagnostic, Wijngaride v. Prudential Lines, Fraieigh v. Smith, Lawnelson v. 33 "Iran Niru", U.S.A. v. IB Cohen, Hunt v. American Export Lines-10:30

DeCaro v. Universal, Cip-poneri v. Flota Mercante, Bianchette v. Buxbaum, Chiro v. Flota Mercante, Shaver v. Yugoslas Lines-11 A.M.

NEPCO v. FEA-1:30 P.M. Perez v. Jurlong Shipping. U.S.A. v. Russ Berrie-2:30

Pardualia v. Blue Star Line, Williams y. City of New York, Rand v. GAF-3 P.M.

For trial on 24 hours telephone notice: Catlett v.

Judge Knapp Judge Knapp's Courtroom in Sept. and Oct. will be 2 04. Mo-

tions will be returnable on Friday, at 2 P.M. Oral argument is

All legal papers must be filed ith the Clerk of the Court. A opy of all motion papers. long with affidavits and emoranda and any proposed ders, judgments and findings to which there may be a dis ute must be delivered to the udge's chambers in Room

04, on the day of filing. All matters regarding the idge's calendar should be ferred to his minute clerk at lephone number 791-0339.

שורים עו הופנונים איו נכרווה Judge MacMahon shall be argued on Fridays at 2:15 P.M. unless the court otherwise directs.

Submit papers to the clerk's office for docketing.
Informal applications may

be made at 10 A.M. on any court day, provided an appoint ment is arranged through Mr. David Kownacki, Minute Cierk, and all counsel appear

All telephone calls regarding calendar matters at to Mr. Kownacki, 791-1018. (Do not call chambers.)

Civil Calendar Ready Trial Calendar

The following civil cases are ready for trial upon a short notice by telephone and will be tried substantially in the order

Nautique, Ltd., v. I.N.A. DiCristona v. Companio Maritime San Basikio

September 21 Pre-trial Conferences 4:30 P.M. Smith v Jacks LaBugh v. Strick Corp.

September 22 4:30 P.M. Burnett v. Burney Bros Goldman v. Gelmart Fuller v. Merriman Holbrook

September 23 First Pa. Bank v. Funwers ematic v. Packaging Montano v. Aliakmon

Twohie v. Underseas Doris Trading v. SS. Union

Enterprise Criminal Calenda v. Sealy-Trial, Sept. 20, 10 A.M.

U.S.A. v. Monson-Sept. 20, 2 U.S.A. v. Keiner-Hearing.

Sept. 21, 10 A.M. U.S.A. v. Ross and McCray-Trial, Sept. 23, at 10 A.M.

Judge Metzner All motions before Judge Metzner will be submitted unless a party requests or al argument in writing In that even the parties will be notified by the Judge's Chambers of the date and time for such argu-

Motions should be made returnable pursuant to the ap-plicable rules in Room 2201. All papers should be filed with the clerk's office.

U.S.A. v. McQueen-Pleading, Oct. 21, 1976, at 10 A.M., in Room 35.

U.S.A. v. R. Bell-Sentence Sept. 22 at 10 A.M. in Room 35. U.S.A. v. Brown—Sentence of Titus, Sept. 22 at 10 A.M. in

U.S.A. Amrep-Conference Wednesday, Sept. 22, at 2 P.M., Room 35.

Morales v. Alico, Inc .-Settlement hearing, Sept. 23, at 12 Noon Room 35.

U.S.A. v. Rustin-Trial Sept. 27 at 10 A.M. in Room 35.

Madonick v. Dennison Minew-Hearing Oct. 12, 1976. 4:30 P.M. Rm. 35.

U.S.A. v. Hunte-Oct. 12, 1978, 9:45 A.M. Room

U.S.A. v. Wallace-Sentence

mediately 791-0245. trial must esir c.a

lo v. Imm. nat. Serv.; Morin v. Rederi A-B Falen; Marubeni America corp. v. SS. Grena; Hellenic Bulk Transport v. Burmah Oll Tankers Itd.; Assoc. Metals & Minerals v. Luria Bros.; Indiana Farm Bureau v Philipp Bros. Chem.; nacone v. United States Lines Donovan v. U. S. Dept. of Justice: Old Town Corp. v. Tokyo Shibaura

Judge Motley

Unless brought on by order to show cause, motions may be made returnable on any business day on notice as provided by applicabel court rules. There will be no oral argument unless a date for this set by the court. Counse therefore, she suld not appear or return date

pecifically directed to do so.
If it is felt that oral argumen would be useful or that an im-mediate hearing is necessary, a request should be made on the

notion papers or by letter. Submit originals of ALL Motions and motion papers to the clerk's Office AND NOT TO CHAMBERS

In civil cases when all discovery, motions, etc., have been completed to file a note of issue or a statement of as in the Clerk's Office.

All inquiries regarding calendar matters should be directed to Mr. Irving Weinberg between 9 A.M. and 9:45 A.M. Telephone Number 791-0928. Please do not call chambers at any other time regarding Calendar matters.

Requests for adjournments continuance of trials, hearings or conferences must be in writing except in the event of unforseen illness of counsel, parties or witnesses

Commencing Sept. 7, 1976 at 10 A.M. the following civil cases will be subject to call for trial in the order listed below on 24-hour telephone notice:

Escriptorio Suplicy v. Netumar Lines: Centre Chine Merchants: Cohen Chen: Int'l Telemeter Teleprompter; Stretch v Fisier; Jimlar Corp. v. S.S. Liberty Exporter; Vigo v. Liberty Exporter; Amer. Exp. Lines; Universal Marine Corp. v. Bristol Meyers Shariman v. L.I.R.R. Co.; Shariman v. Inness-Brown Consulting Co.; Interamerican Fruit v. S.S. Chilean Reefer: Alvarez v. Ogden Marine, Inc.; Matenciot v. David & Dash; Baker v. Marine Interests Corp.; Van Buskirk v. Blanchette; Martinez v. Nat'l Shipping: Eckhart v. Schubin; Martin Motor Sales v. Saab Scandia: Mersey Products v. Ampex Corp.; U.S.A. v Moran Towing: A. Fantis, Inc. v. S.S. Concordia Love; McMillan v. Marine Sulphur Ship Corp.; Surrusco v. Port Auth .; Schwartz v. Homowack Lodge Lombardi v. Costa armatori; Patrick v. Borden; Marsella v. Penn Central; Beliard v. Isthmian Lines; Caro v. Park Steamship; Baroumas v. S.S. Ekaterini: Zingirdes v Foreign Tankers; Martinez v Amer. Exp. Lines; Jastrzebski v. New York; Roveccio v. Ship. Corp. of India; U.S. Steel Int'l v. S.S. J. R. Gumuspaza; Mitcalendar, Sept. 22, 1975, at 4:30

Makarova v. Crowe Settlement Conf. (Cha Sept. 22, 9:15 A.M. Moriello v. Fearz Settlement Conf. (Chamuselle, 9:15 A.M.

Ballesteros v. Slumberto Settlement Conf. Oct. 1, 9:15. Scarves By Vera v. Lawtex Settlement Conf. (Chambers), Oct. 5, 4:45 P.M.

Moohr v. Cross Cty. Cab-ettlement Conf. Oct. 12, 9:15 in Chambers.

Stimas v. Marine Trans Lines-Trial 9:30 A.M., Sept

U.S.A. Guthele Conference Sept. 27, 4:45 P.M. U.S.A. v. Carlucci—Sentence 4:30 P.M., Sept. 28.

READY TRIAL CALENDAR

All counsel must be prepared to proceed to trial on 48-hour notice and not necessarily in the order in which they

Moohr v. Cross City Cab; Enquire Ptg. v. Ilmac Corp.; Wang v. NYC; Walters v. Nautilus Petroleum Carriers; Scarves by Vera v. Lawte Corp.; Hanley v. Charente 38. Ltd : Knoch Oil v. Motor Tanker Oricio: Oken v. C & S Securities: In re Complaint of Guynedd Corp.; Moreillo v. Fearnley; Hamiltion v. Collina Shipping; Schimansky v. Moduline Industries; Graves v. American Export Lines; Vis-son v. Farrell Lines.

PRE TRIAL CALENDAR Sept. 21, 1976, at 9:30 A.M.

Dalamal & Sons, Inc. v. Freimier & Bank of America Velasco v. American Export

Di Gerlando v. P.N. Djokarta

Lloyd U.S. Dept. of Labor v. Reliable Auto Body Towing Usery, Sec. of Labor v. Friendly Homes Inc.

Fernandez v. S/S Eurypylus Ellentuck v. Klein Somers Manor Nursing Home Inc. v. Tola Spanka Music Corp. v.

Dynamic Hous M. Paquet Co. v. Ace Skov R/A Omlie v. Mediterranean

Judge Pollack Hearings and Trials

Marine Lines

Courtroom 128 U.S.A. v. Nachmani and Cohen-Trial, Sept. 21, at 10

U.S.A. v. Helmerle and Warme-Trial, Sept. 23, at 10

Restaurant Associates v. Anheiser Busch-Trial, Sept. 21. at 2 P.M. Mendez v. Cie Generale-

Trial Sept. 23, at 2 P.M Ohringer v. Munsingwear-Triai. Oct. 1, 10 A.M.

Williams v. N.Y.C.-Trial. Oct. \$, 10 A.M. Perez v. Ali-Trial, Oct. 12, 10 A.M.

McKean v. Lindsey: Byrd v. Sunexport Holding-Trials to

Agricultural Institute v Simms-Trial to follow.

AFFIDAVIT

76-1296

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA

v- :

JAMES F. WEIMERLE,

Defendant-Appellant. :

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

ELLIOTIH. POLLACK, being duly sworn, deposes and says:

- 1. I am an Attorney-at-Law admitted to practice for four years in the Commonwealths of Massachusetts and Pennsylvania. In early 1973, I was admitted to practice before the United States District Court for the District of Massachusetts and the Court of Appeals for the First Circuit. In July 1976 I took the Bar examination for admission to practice in the State of New York, and on December 15, 1976, I was notified that I had passed the examination. I am presently awaiting my swearing before the First Department, Appellate Division, New York Supreme Court, which should take place in February, 1977.
- 2. I am the brother and law associate of Michael B. Pollack, Esq. with offices located at 1345 Ave. of the Americas, New York, N. Y. 10019.
- 3. My brother, Michael B. Pollack, Esq., served as counsel to defendant-appellant JAMES F. HEIMERLE in a trial before the Honorable Charles M. Metzner, Docket No. 76 Cr. 146 and in the appeal arising from the conviction therefrom, 76-1206. As my brother's law associate, I assisted in the preparation of Heimerle's brief on appeal. I am fully familiar with the issues raised therein and with record of the criminal trial in the court below.

4. During the week of November 15, 1976 my brother was sick with the flu. Therefore, my brother and I considered

whether I should argue the appeal in this case, which was scheduled to be heard by this Court on November 18, 1976. My brother informed me that he intended to call the Clerk of the Court concerning procedures for substitution of counsel on oral argument.

- 5. My brother thereafter told me that the Clerk of the Court informed him that I could be admitted for the purposes of arguing that appeal and I could with Heimerle's consent be substituted for oral argument due to my brother's illness.
- 6. On November 17, 1976 I was called by the Clerk of this Court and was informed that co-appellant Harold Rosenberg had informed the Clerk of the Court that he decided to proceed on the papers already submitted to the Court and not to proceed with the oral argument. I told the clerk that I would have to consult with Heimerle before making a determination as to whether to proceed solely on the basis of papers submitted and waive oral argument. On that same date I personally visited JAMES F. HEIMERLE at the Metropolitan Correctional Center. During the course of my visit, I informed Mr. Heimerle that my brother was ill and that he had the choice of requesting a postponement of the oral argument due to my brother's illness and the illness of Judge Friendly or alternatively have me make the oral argument in my brother's place and have the oral argument taped for Judge Friendly's consideration. Mr. Heimerle emphatically demanded that I go forward with the oral argument on November 18, 1976 and expressed his position that the appeal was meritorious. Mr. Heimerle, with whom I had spoken to on numerous occasions before at my brother's direction concerning the prosecution of this appeal, knew that I had assisted with my brother in the drafting of Heimerle's appellate brief. Heimerle further stressed his belief that I should give the oral argument and that we should not submit on

papers as co-defendant Rosenberg had decided to do.

7. On November 18, 1976 I informed the Clerk of the Court that Heimerle did not want to waive oral argument

and that I would appear on his behalf. On that same date I explained these circumstances to the Court at the beginning of my oral argument and was granted permission to proceed for the purposes of this appeal by Judges Waterman and Mulligan.

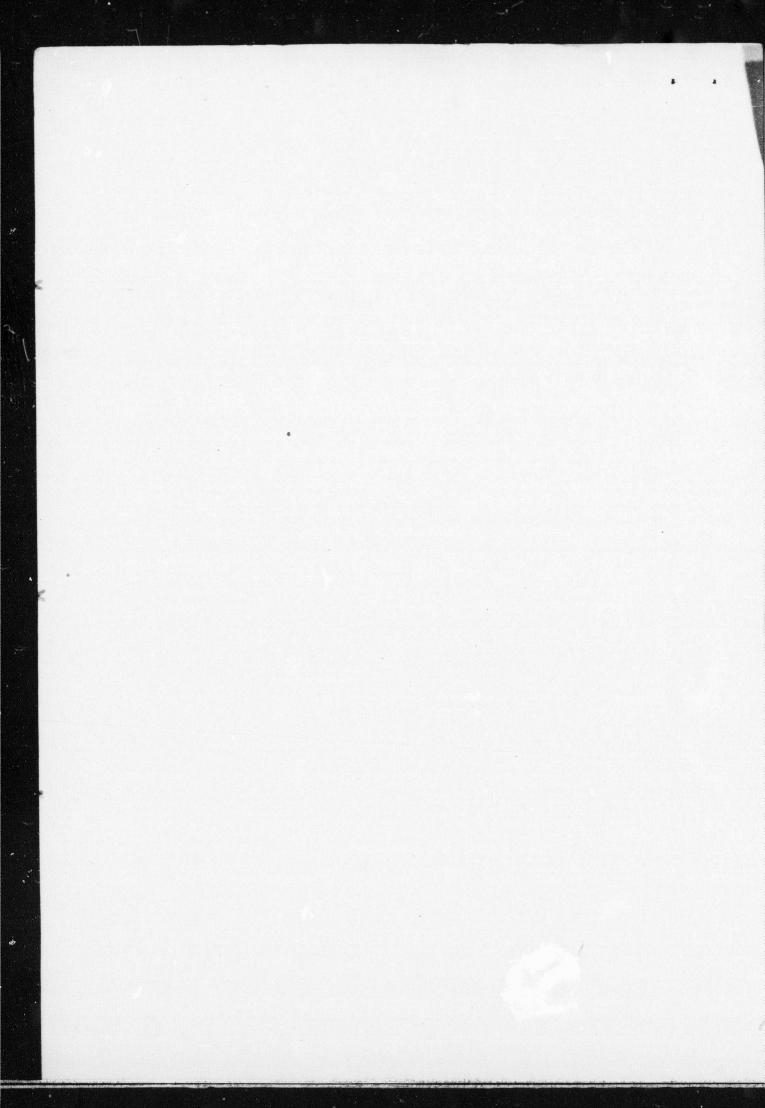
8. Mr. Heimerle's petition for rehearing misrepresented the occurrences surrounding the substitution of counsel for the oral argument of this appeal.

ELLIOT H. POLLACK

Sworn to before me this

28th day of January, 1977

Notary Public



AFFIDAVIT OF MAILING

STATE OF NEW YORK COUNTY OF NEW YORK SOUTHERN DISTRICT OF NEW YORK)

Paith Hermann, being duly sworn, deposes and says that she is employed in the office of New York Joint Strike Force for the Southern District of New York.

That on the 3rd day of February, 1977 served a copy(s) of the within Notice or Motion and attached affidavits by placing the same in a properly postpaid franked envelope addressed:

> James F. Heimerle · United States Penitentiary Atlanta, Georgia

-And deponent further says that she sealed the said envelope and placed the same in the mail drop for mailing at the United States Courthouse, Foley Square, Borough of Manhattan, City of New York.

Faith Ker

Sworn to before me this

3rd day of February, 1977

ELIZABETH A. MCKEEVER Notary Public, State of How York No. 43-4529132 Cleriuit C. The Karler Qualited in Minister 19. 19.